UNITED STATES COURT OF APPEALS

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Filed: May 16, 2005

Johnny O. Clark Special Needs Facility #220554 7575 Cockrill Bend Road Nashville, TN 37209-1057

RE: 04-6373

Clark vs. Waller

District Court No. 03-02951

Dear Mr. Clark:

Enclosed is a copy of an order which was entered today in the above-styled case.

Very truly yours, Leonard Green, Clerk

(Ms.) Ratricia J. Elder Senior Case Manager

Enclosure

cc: Honorable J. Daniel Breen Mr. Robert R. Di Trolio

## UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOHNNY O. CLARK,	FICE	D
Petitioner-Appellant,	MAY 1 6 2	005
v.	) <u>ORDER</u> <b>LEO</b> NARD GREEN	N, Clerk
ROBERT WALLER, Warden,	) )	
Respondent-Appellee.	) A TRUE COPY.	
	By Cutte Clerk  By Cutte Clerk	

Before: MARTIN, Circuit Judge.

Johnny O. Clark, a Tennessee prisoner proceeding pro se, appeals a district court judgment dismissing his petition for a writ of habeas corpus filed under 28 U.S.C. § 2254. He applies for a certificate of appealability ("COA"), see 28 U.S.C. § 2253(c)(1) and Fed. R. App. P. 22(b)(1)-(2), and requests leave to proceed in forma pauperis ("IFP").

Clark was convicted by a jury of first-degree murder and was sentenced to life in prison.

After exhausting his state direct-appeal and post-conviction remedies, he filed a federal habeas corpus petition, which the district court dismissed. The court also denied a COA and denied him IFP status because an appeal would not be taken in good faith.

Clark raised three grounds for relief in the district court: 1) ineffective assistance of trial counsel, 2) insufficiency of the evidence, and 3) ineffective assistance of post-conviction counsel. The court denied all three on the merits.

A COA shall issue "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If the district court dismissed the habeas petition on the merits, he must show that "reasonable jurists could debate whether" it "should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473, 483-84 (2000) (internal quotations omitted).

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Clark meets this standard. Accordingly, the application for a certificate of appealability is granted on all of his issues. Leave to proceed *in forma pauperis* is also granted. The clerk's office shall issue a briefing schedule. This court also sua sponte orders that counsel be appointed to represent Clark.

ENTERED BY ORDER OF THE COURT

Glorard Greeny



## **Notice of Distribution**

This notice confirms a copy of the document docketed as number 10 in case 2:03-CV-02951 was distributed by fax, mail, or direct printing on May 23, 2005 to the parties listed.

Johnny O. Clark 220554 7575 Cockrill Bend Blvd. Nashville, TN 37209--105

Honorable J. Breen US DISTRICT COURT